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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 71-1383

JAMES A. POOLEY,
Petitioner,

vs.

STATE OF MISSISSIPPI,
Respondent.

PETITION FOR REHEARING

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PETITION FOR REHEARING

The Petitioner herein respectfully moves this Court for an order (1) vacating its denial of the Petition for Writ of Certiorari entered on June 26, 1972, and (2) granting the Petition for Certiorari. As grounds for this motion, Petitioner states the following:

(1) Intervening circumstances of substantial and controlling effect, including substantial grounds heretofore not previously presented, have occurred by way of the enactment by the Legislature of the State of Mississippi of new legislation directly affecting your Petitioner.

Petifioner was arrested, tried and convicted under the provisions of Section 6846, **Miss. Code of 1942**, as amended, for the sale of marijuana, which section provides:

> "It shall be unlawful for any person to manufacture, possess, have under his or her control, sell, prescribe, administer, dispense, or compound any narcotic drug except as authorized in this Act."

Pursuant to his conviction, Petitioner was sentenced to a term of five (5) years in the Mississippi State Penitentiary and to pay a fine of One Thousand Dollars ($1,000.00). This sentence was meted out pursuant to the provisions of Section 6866, **Miss. Code of 1942**, as amended, which section provides:

> "Any person violating any provision of this Act shall be deemed guilty of a felony and upon conviction be punished for the first offense by a fine not exceeding five thousand dollars ($5,000.00) or by imprisonment in the State penitentiary for not exceeding five (5) years or by both such fine and imprisonment, and for any subsequent offense, by a fine not exceeding ten thousand ($10,000.00) dollars, or by imprisonment in the State penitentiary for not exceeding ten (10) years, or by both such fine and imprisonment."

By Laws, 1971, Chapter 521, Section 38, effective from and after April 16, 1971, the Mississippi Legislature repealed Sections 6846 and 6866, supra, and enacted the Uniform Controlled Substances Act, **Miss. Code of 1942**, as amended, Sections 6381-01-51-52-56-57-70-74-83-87-88 (appended and bound with this Petition and marked Exhibit "A"). By its decision and order of January 4, 1972, the Supreme Court of Mississippi, apparently recognizing the possibility of probation or suspended sentence under Section 6831-74 stated in its opinion:

> "Since this case was tried, the Legislature has enacted the Uniform Controlled Substances Act which

materially reduces the penalty that may be imposed for first offenders."

and vacated Petitioner's sentence and directed that the case be remanded to the trial court

". . . for the imposition of such sentence as the trial court may deem appropriate under the provisions of the Uniform Controlled Substances Act."

In the course of these proceedings in this Honorable Court, the Mississippi Legislature, spurred to action by decisions of the Mississippi Supreme Court amended the Uniform Controlled Substances Act in several particulars. The decisions of the Mississippi Supreme Court reveal that the Mississippi Legislature in the enactment of the Uniform Controlled Substances Act, **Miss. Code of 1942**, as amended, Sections 6831-01-88, provided that possession of the drug marijuana was in one instance a felony and in another instance a misdemeanor with two distinct penalties for the same offense. See **Harold Wayne Johnson v. State of Mississippi**, 260 So.2d 436 (1972). Obviously said Act further, unlike the provisions in Section 6846, **Miss. Code of 1942**, supra, did not provide a section covering the words "sale of drugs". The second enactment of the Uniform Controlled Substances Act, **Miss. Code of 1942**, particularly Section 6831-70(c), (Exhibit "B" to this Petition) specifically made such a provision by making it

". . . unlawful for any person to sell, barter or transfer a controlled or counterfeit substance for money or for other consideration."

and establishing the penalty for such crime as imprisonment for not more than thirty (30) years, or fine of not more than Thirty Thousand Dollars ($30,000.00), or both, Section 6831-70, **Miss. Code of 1942**, as amended, by laws 1972, Senate Bill 1609, effective from and after July 1, 1972. The statute effective July 1, 1972, is appended, bound with this Petition and marked Exhibit "B".

By this Petition for Rehearing, Petitioner submits:

(1) That the statutes in force at the time of Petitioner's alleged criminal conduct, Sections 6846 and 6866, supra, were repealed by the Uniform Controlled Substances Act, Sections 6831-01-88, supra (April 16, 1971—see pertinent sections Exhibit "A"), and that this Uniform Controlled Substances Act (1971) repealed the crime of which Petitioner stands convicted.

(2) That the Mississippi Supreme Court has, in the instant case by decision of January 4, 1972, applied the Uniform Controlled Substances Act (1971—Exhibit "A") to the case at bar and that said statute is, by subjecting Petitioner to an increase of sentence and punishment, to a maximum of six (6) years imprisonment, Two Thousand Dollars ($2,000.00) fine, or both, ex post facto and subject to the prohibition of Art. 1, Sections 9 and 10 of the Federal Constitution. **Calder v. Bull**, 3 Dall. 386, 1 L. Ed. 648; **Malloy v. South Carolina**, 237 U.S. 180, 35 S. Ct. 507, 69 L. Ed. 905 (1915).

(3) That the Uniform Controlled Substances Act (1971—Exhibit "A") contains no provision making it unlawful for any person "to sell, barter or transfer" a controlled substance for money or other consideration as the previous Section 6846, supra. Thus, with the repeal of Section 6846, supra, the crime of selling marijuana ceased to exist under the laws of the State of Mississippi. Review of the pertinent statutes effective July 1, 1972 (Exhibit "B"), particularly Section 6831-70, supra, as amended, reveals that the Mississippi Legislature recognized this oversight when it specifically enacted Section 6831-70(c) which provides:

> "(c) Except as authorized by this act, it is unlawful for any person to sell, barter or transfer a controlled or counterfeit substance for money or for other consideration.

"Any person who violates this subsection with respect to:

"(1) A controlled substance classified in Schedule I or II, as set out in Sections 6831-57 and 6831-58, Mississippi Code of 1942, which is a narcotic drug, is guilty of a felony and upon conviction may be imprisoned for not more than thirty (30) years, or fined not more than Thirty Thousand Dollars ($30,000.00), or both;"

Recognizing the history of the drug laws in Mississippi and the current statutes, Petitioner respectfully submits that he cannot be sentenced under the Uniform Controlled Substances Act, as originally enacted (1971) or as amended (1972) even if it is held that the conviction is proper.

Although the Uniform Controlled Substances Act provides in Section 6831-83 that prosecutions for violations of law prior to April 16, 1971, are not to be affected or abated by the Uniform Act this same section specifically provides that the penalty for such violation shall be prescribed by the Uniform Act.

Petitioner does not contend that the Uniform Controlled Substances Act as originally enacted or as amended is in toto ineffectual or unenforceable as to crimes committed from and after the Act and amendments thereto. However, Petitioner urges insofar as this legislation purports to have a bearing on his conviction and sentence, the instant the penalties provided at the time of the commission of the criminal act were abolished and new and greater penalties provided, the application of same was ex post facto. Petitioner asserts that the Mississippi Uniform Controlled Substances Act of 1971 (Exhibit "A") as amended 1972 (Exhibit "B"), does not apply to Petitioner as the former contains no provision for the offense charged and thus fails to state a penalty appropriate for the Petitioner and as for the latter, once again in a short

period of time the State Legislature has increased the penalties and provided for the Petitioner's original charge with both acts emphatically ex post facto and thus cannot be applied to Petitioner as he is protected both by the State and Federal Constitutional provisions prohibiting State and Federal governments from enacting ex post facto laws.

CONCLUSION

For the foregoing reasons, as well as those grounds set forth in the Petition for Writ of Certiorari, Petitioner prays that this Court grant a rehearing of its order of denial of certiorari, vacate the order, grant the Petition and review the judgment and opinion of the Supreme Court of the State of Mississippi in this cause.

Respectfully submitted

ALVIN M. BINDER
511 East Pearl Street
P. O. Box 25
Jackson, Mississippi 39205
Counsel for Petitioner

Certificate of Counsel

As counsel for the Petitioner, I hereby certify that this Petition for Rehearing is presented in good faith and not for purposes of delay and that same is restricted to the grounds specified in Rule 58(2) of this Court.

ALVIN M. BINDER
511 East Pearl Street
P. O. Box 25
Jackson, Mississippi
Counsel for Petitioner

Certificate of Service

I hereby certify that on this the 14 day of July, A.D., 1972, three true copies of the above and foregoing Petition for Rehearing were mailed United States Postage prepaid, to Honorable A. F. Summer, Attorney General, State of Mississippi, New Capitol Building, Jackson, Mississippi 39201, Counsel for Respondent. I further certify that all parties required to be served have been served.

ALVIN M. BINDER
511 East Pearl Street
P. O. Box 25
Jackson, Mississippi 39205
Counsel for Petitioner

APPENDIX

EXHIBIT "A"

§§ 6831-01 through 6831-11. Repealed by § 38 of ch. 521, Laws, 1971, eff from and after passage (approved April 16, 1971).

§ 6831-51. Title.

This act is to be known as the Uniform Controlled Substances Act.

Sources: Laws, 1971, ch. 521, § 1, eff from and after passage (approved April 16, 1971).

§ 6831-52. Purpose.

The purpose of this act is to make uniform the law of Mississippi, wherever possible, with respect to this subject among those states with the same or similar laws.

Sources: Laws, 1971, ch. 521, § 2, eff from and after passage (approved April 16, 1971).

§ 6831-56. Definitions.

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(1) A practitioner (or, in his presence, by his authorized agent), or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manfacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(c) "Board" means the Mississippi State Board of Health.

(d) "Bureau" means the Mississippi Bureau of Drug Enforcement within the Mississippi State Board of Health.

(e) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Sections 7, 8, 9, 10, and 11 [§§ 6831-57 through 6831-61].

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(g) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship.

(h) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) substances recognized as drugs in the official United States Pharmacopocia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man

or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in this paragraph. It does not include devices or their components, parts, or accessories.

(m) "Immediate precursor" means a substance which the State Board of Pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(n) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(1) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

(2) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(o) "Marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the

resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seed or resin.

(p) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(q) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or a addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 201 of this act, the dextrorotatory isomer of a 3-methoxy-n-methylmorphinian and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(r) "Opium poppy" means the plant of the species Papaver comniferum L., except its seeds.

(s) "Paraphernalia" means needles, spoons, pipes, capsules, syringes, tourniquets, any form of packaging, or any other material used for taking or administering drugs.

(t) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate trust, partnership or association, or any other legal entity.

(u) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(v) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(w) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(x) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(y) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of this household.

Sources: Laws, 1971, ch. 521, § 6, eff from and after passage (approved April 16, 1971).

§ 6831-57. Schedule I of controlled substances.

The Board shall place a substance in Schedule I of this section if it finds that the substance:

(1) Has high potential for abuse; and

(2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

(a) The controlled substances listed in this section are included in Schedule 1.

SCHEDULE I

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetylmethodol;
(2) Allylprodine;
(3) Alphacetylmethadol;
(4) Alphameprodine;
(5) Alphamethodol;
(6) Benzethidine;
(7) Betacetylmethadol;
(8) Betameprodine;
(9) Betamethadol;
(10) Betaprodine;
(11) Clonitazene;
(12) Dextromoramide;
(13) Dextrorphan;
(14) Diampromide;
(15) Diethylthiambutene;
(16) Dimenoxadol;
(17) Dimepheptanol;
(18) Dimethylthiambutene;
(19) Dioxaphetyl butyrate;
(20) Dipipanone;
(21) Ethylmethylthiambutene;
(22) Etonitazene;
(23) Etoxeridine;
(24) Furethidine;
(25) Hydroxypethidine;
(26) Ketobemidone;
(27) Levomoramide;
(28) Levophenacylmorphan;
(29) Morpheridine;
(30) Noracymethadol;
(31) Norlevorphanol;
(32) Normethadone;
(33) Norpipanone;
(34) Phenadoxone;
(35) Phenampromide;
(36) Phenomorphan;
(37) Phenoperidine;
(38) Piritramide;
(39) Proheptazine;
(40) Properidine;
(41) Racemoramide;
(42) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Etorphine;
(10) Heroin;
(11) Hydromorphinol;
(12) Methyldesorphine;
(13) Methyldihydromorphine;
(14) Morphine methylbromide;
(15) Morphine methylsulfonate;
(16) Morphine-N-Oxide;
(17) Myrophine;
(18) Nicocodeine;
(19) Nicomorphine;
(20) Normorphine;
(21) Phoclodine;
(22) Thebacon.

Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is posssible within the specific chemical designation:

(1) 3, 4-methylenedioxy amphetamine;
(2) 5-methoxy-3, 4-methylenedioxy amphetamine;
(3) 3, 4, 5-trimethoxy amphetamine;
(4) Bufotenine;
(5) Diethyltryptamine;
(6) Dimethyltryptamine;
(7) 4-methyl-2, 5-dimethoxylam-amphetamine;
(8) Ibogaine;
(9) Lysergic acid diethylamide; (LSD)
(10) Marihuana;
(11) Mescaline;
(12) Peyote;
(13) N-ethyl-3-piperidyl benzilate;
(14) N-methyl-3-piperidyl benzilate;
(15) Psilocybin;
(16) Psilocyn;
(17) Tetrahydrocannabinols.

§ 6831-70. Prohibited acts A—penalties.

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess a controlled substance.

Any person who violates this subsection with respect to:

(1) A controlled substance classified in Schedule I or II, as set out in Sections 7 and 8 [§§ 6831-57 and 6831-58] of this act, which is a narcotic drug, is guilty of a felony and upon conviction may be imprisoned for not more than six (6) years, or fined not more than Two Thousand Dollars ($2,000.00), or both;

(2) Any other controlled substance classified in Schedule I, II, or III, as set out in Sections 7, 8, and 9 [§§ 6831-57 through 6831-59] of this act, is guilty of a felony and upon conviction may be imprisoned for not more than four (4) years, or fined not more than Two Thousand Dollars ($2,000.00), or both;

(3) A substance classified in Schedule IV, as set out in Section 10 [§ 6831-60] of this act, is guilty of a felony and upon conviction may be imprisoned for not more than two (2) years, or fined not more than One Thousand Dollars ($1,000.00), or both;

(4) A substance classified in Schedule V, as set out in Section 11 [§ 6831-61] of this act, is guilty of a misdemeanor and upon conviction may be confined for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

Any person who violates this subsection with respect to:

(1) A counterfeit substance classified in the said Schedule I or II which is a narcotic drug, is guilty of a felony and upon conviction may be imprisoned for not more than six (6) years, or fined not more than Two Thousand Dollars ($2,000.00), or both;

(2) Any other counterfeit substance classified in Schedule I, II, or III, as defined in Sections 7, 8 and 9 [§§ 6831-57 through 6831-59] of this act, is guilty of a felony and upon conviction may be imprisoned for not more than four (4) years, or fined not more than One Thousand Dollars ($1,000.00), or both.

(3) A counterfeit substance classified in Schedule IV, as defined in Section 10 [§ 6831-60] of this act, is guilty of a felony and upon conviction may be imprisoned for not more than two (2) years, or fined not more than One Thousand Dollars ($1,000.00), or both;

(4) A counterfeit substance classified in Schedule V, as defined in Section 11 [§ 6831-61] of this act, is guilty of a misdemeanor and upon conviction may be confined for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor and upon conviction, may be confined for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both.

(d) It is unlawful for a person who is not authorized by the State Board of Health or other lawful or proper authority to possess paraphernalia to be used for the purpose of taking or administering a controlled substance. Any person who violates this subsection is guilty of a misdemeanor and upon conviction, may be confined for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both.

Sources: Laws, 1971, ch. 529, § 20, eff from and after passage (approved April 16, 1971).

Cross references: § 6831-74, this title.

§ 6831-74. Distribution to persons under age twenty-one—second and subsequent offenses.

Any person twenty-one (21) years of age or over who violates Section 20 [§ 6831-70] of this act by distributing a controlled substance heretofore defined in Schedule I or II of Sections 7 and 8 [§§ 6831-57 and 6831-58] of this act which is a narcotic drug to a person under twenty-one (21) years of age is punishable by the fine authorized by Section 20 [§ 6831-70] of this act and a term of imprisonment of up to twice that authorized by said Section 20 [§ 6831-70] or by both. Any person eighteen (18) years of age or over who violates said Section 20 [§ 6831-70] by distributing any other controlled substance listed in Schedules I, II, III, IV, and V, as set out in Sections 7, 8, 9, 10, and 11 [§§ 6831-57 through 6831-61] of this act, to a person under eighteen (18) years of age is punishable by the fine authorized by the said Section 20 [§ 6831-70], or by a term of imprisonment or confinement up to twice that authorized by said Section 20 [§ 6831-70], or both.

(a) Any person convicted of a second or subsequent offense under this act may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this act or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under paragraph (c) of Section 20 [§ 6831-70].

(d) However, regardless of the penalties provided heretofore for the violation of any section or portion of this act, the judge of the court of jurisdiction of any defendant may, in his discretion, suspend such penalty, penalties, or portions thereof, for any person charged with a first offense.

(e) A person convicted under this act or under any previous act for a violation of the law regarding controlled substances shall be eligible for parole just as in any other criminal conviction as provided by Section 4004-03, Mississippi Code of 1942.

(f) Any person who was convicted and/or who is still serving a sentence in the Mississippi State Penitentiary for a first offense under any act hereunder repealed may, upon the enactment of this act, petition the court of original jurisdiction for resentencing under the provisions of this act.

(g) Any person previously indicted under a prior act for violation of any law regarding controlled substances but not yet sentenced shall be sentenced under the provisions of this act.

(h) For the purposes of the sentencing provisions of the act, a first offense shall be deemed to be and include any offense, offenses, act or acts prohibited by this act, or any act herein repealed, committed prior to a first indictment under this act or under any act herein repealed.

Sources: Laws, 1971, ch. 521, § 24, eff from and after passage (approved April 16, 1971).

Cross Reference: § 6831-83, this title.

§ 6831-83. Pending proceedings.

(a) Prosecution for any violation of law occurring prior to the effective date of this act shall not be affected or abated by this act and the penalty for such violation shall be prescribed in accordance with Section 24(g) [§ 6831-74] of this act.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this act are not affected by this act.

(c) All administrative proceedings pending under prior laws which are superseded by this act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of the act. Any substance controlled under prior law which is not listed within Schedules I through V as defined in Sections 7, 8, 9, 10 and 11 [§§ 6831-57 through 6831-61] of this act is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The State Board of Pharmacy and State Board of Health shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution or dispensing of any controlled substance prior to the effective date of this act and who are registered or licensed by the state.

(e) This act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

Sources: Laws, 1971, ch. 521, § 33, eff from and after passage (approved April 16, 1971).

§ 6831-87. Severability

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sources: Laws, 1971, ch. 521, § 37, eff from and after passage (approved April 18, 1971).

§ 6831-88. Repeals

Sections 6831-01, 6831-02, 6831-03, 6831-04, 6831-05, 6831-06, 6831-07, 6831-08, 6831-09, 6831-10, 6831-11, 6844, 6845, 6845.5, 6846, 6849, 6850, 6852, 6853, 6854, 6855, 6858, 6860, 6863, 6864, 6865, 6866, 6867, 6868, and 6869 are hereby repealed.

Sources: Laws, 1971, ch. 521, § 38, eff from and after passage (approved April 18, 1971).

EXHIBIT "B"

Section 7. Section 6831-70, Mississippi Code of 1942, is amended to read as follows:

6831-70. (a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

(1) A controlled substance classified in Schedule I or II, as set out in Sections 6831-57 and 6831-58, Mississippi Code of 1942, which is a narcotic drug is guilty of a felony and upon conviction may be imprisoned for not more than fifteen (15) years, or fined not more than Fifteen Thousand Dollars ($15,000.00), or both;

(2) Any other controlled substance classified in Schedules I, II or III, as set out in Sections 6831-57, 6831-58 and 6831-59, Mississippi Code of 1942, is guilty of a felony and upon conviction may be imprisoned for not more than ten (10) years, or fined not more than Fifteen Thousand Dollars ($15,000.00), or both;

(3) A substance classified in Schedule IV, as set out in Section 6831-60, Mississippi Code of 1942, is guilty of a felony and upon conviction may be imprisoned for not more than ten (10) years, or fined not more than Fifteen Thousand Dollars ($15,000.00), or both;

(4) A substance classified in Schedule V, as set out in Section 6831-61, Mississippi Code of 1942, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, or fined not more than Five Thousand Dollars ($5,000.00), or both.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(1) A counterfeit substance classified in the said Schedule I or II which is a narcotic drug is guilty of a felony and upon conviction may be imprisoned for not more than fifteen (15) years, or fined not more than Fifteen Thousand Dollars ($15,000.00), or both;

(2) Any other counterfeit substance classified in Schedules I, II or III as defined in Sections 6831-57, 6831-58 and 6831-59, Mississippi Code of 1942, is guilty of a felony and upon conviction may be imprisoned for not more than ten (10) years, or fined not more than Fifteen Thousand Dollars ($15,000.00), or both;

(3) A counterfeit substance classified in Schedule IV as defined in Section 6831-60, Mississippi Code of 1942, is guilty of a felony and upon conviction may be imprisoned for not more than ten (10) years, or fined not more than Fifteen Thousand Dollars ($15,000.00), or both;

(4) A counterfeit substance classified in Schedule V as defined in Section 6831-61, Mississippi Code of 1942, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, or fined not more than Five Thousand Dollars ($5,000.00), or both.

(c) Except as authorized by this act, it is unlawful for any person to sell, barter or transfer a controlled or counterfeit substance for money or for other consideration.

Any person who violates this subsection with respect to:

(1) A controlled substance classified in Schedule I or II, as set out in Sections 6831-57 and 6831-58, Mississippi Code of 1942, which is a narcotic drug, is guilty of

a felony and upon conviction may be imprisoned for not more than thirty (30) years, or fined not more than Thirty Thousand Dollars ($30,000.00), or both;

(2) Any other controlled substance classified in Schedules I, II or III, as set out in Sections 6831-57, 6831-58 and 6831-59, Mississippi Code of 1942, is guilty of a felony and upon conviction may be imprisoned for not more than twenty (20) years, or fined not more than Thirty Thousand Dollars ($30,000.00), or both;

(3) A substance classified in Schedule IV, as set out in Section 6831-60, Mississippi Code of 1942, is guilty of a felony and upon conviction may be imprisoned for not more than twenty (20) years, or fined not more than Thirty Thousand Dollars ($30,000.00), or both;

(4) A substance classified in Schedule V, as set out in Section 6831-61, Mississippi Code of 1942, is guilty of a felony and upon conviction may be imprisoned for not more than ten (10) years, or fined not more than Ten Thousand Dollars ($10,000.00), or both.

(d) It is unlawful for any person knowingly or intentionally to possess any controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection with respect to:

(1) A controlled substance classified in Schedules I or II as set out in Sections 6831-57 and 6831-58, Mississippi Code of 1942, except marihuana, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, or fined not more than Three Thousand Dollars ($3,000.00), or both;

(2) (a) One (1) ounce or less of marihuana, upon conviction may be confined for not more than one (1) year

in the county jail or fined not more than One Thousand Dollars ($1,000.00), or both.

(b) More than one (1) ounce of marihuana, upon conviction may be fined not more than One Thousand Dollars ($1,000.00), or confined in the county jail for not more than one (1) year, or both; or fined not more than Three Thousand Dollars ($3,000.00), or imprisoned in the state penitentiary for not more than three (3) years, or both.

(3) A controlled substance classified in Schedules III, IV or V as set out in Sections 6831-59, 6831-60 and 6831-61, Mississippi Code of 1942, upon conviction may be confined for not more than one (1) year, or fined not more than One Thousand Dollars ($1,000.00), or both.

(c) It is unlawful for a person who is not authorized by the State Board of Health, State Board of Pharmacy, or other lawful authority to possess paraphernalia to be used for the purpose of processing, delivering, packaging, taking or administering a controlled substance. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be confined for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00) or both.